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No. 497

In the Supreme Court of the United States

OCTOBER TERM, 1935

ST. JOSEPH STOCK YARDS COMPANY, APPELLANT

v.

THE UNITED STATES OF AMERICA AND THE SECRETARY OF AGRICULTURE

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI

MEMORANDUM WITH RESPECT TO APPELLANT'S OBJECTIONS AND EXCEPTIONS TO APPELLEE'S BRIEF

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MEMORANDUM WITH RESPECT TO APPELLANT'S OBJECTIONS AND EXCEPTIONS TO APPELLEES' BRIEF

The Government respectfully submits this memorandum for the consideration of the Court in connection with appellant's objections and exceptions to the Government's brief.

Appellant has quoted numerous sentences from the Government's brief and asserted either that no record reference is shown for the sentence quoted or that the record reference cited does not support the statement made.

The Government respectfully submits that in each instance appellant's objections and excep-

tions are unwarranted. As will appear from the following analysis and comment, many of the sentences as to which appellant states that no record reference is shown are statements made either immediately preceding or following factual statements as to which full record references (which are not challenged by appellant as not supporting the statement made) are given.

On pages 2 and 3 of appellant's objections and exceptions sentences are quoted from pages 17, 18, 19, 20, 21, 22, 23, and 25 of the Government's brief with the comment as to each that no reference to the record is given. It suffices to say that each of these sentences is taken from the "Summary of Argument" in which it is not customary to cite record references. The "Summary of Argument" purports merely to be a concise statement of the argument to be elaborated in greater detail with appropriate record references under the section of the brief headed "Argument." As for the sentence quoted from page 21 of the Government's brief to the effect that the capital stock outstanding was $1,875,000, reference to Government Exhibit 121–A, page 381, shows that since 1930 the outstanding capital stock has been carried on appellant's books at $1,875,000.

The remaining objections and exceptions will be taken up and discussed seriatim. Appellant's references to the Government's brief and the sentences which are quoted therefrom will in each instance

(except those sentences quoted by appellant from the "Summary of Argument") be repeated, followed by such comment or explanation as seems appropriate.

Govt. brief—p. 31:

> While it had this original purpose, it is not used exclusively by employees or patrons of the stockyards.

Comment: At the end of the paragraph containing the above quoted sentence a reference to page 408 of the record is given. On that page the witness testified with respect to the Transit House that it "is not used exclusively for employees or patrons of the yards in connection with their compensation or stockyard services rendered to them."

Govt. brief—p. 32:

> * * * even though their yards are located some distance from the business section of the city. (R. 209).

Comment: The testimony at page 209 of the record certainly indicates that the stockyards is some distance from the business section of the city of St. Joseph. However, the record contains further support for the sentence quoted. Government Exhibit 128, page 3, contains a general description of appellant's land, and states: "The lands of the St. Joseph Stock Yards Company are located largely outside of the city limits of St. Joseph, and about 3¼ miles, at their center of activity, from the center of the business district of the city." Supplemental

map No. 5 of the same Exhibit also shows the relation of the stockyards to the city of St. Joseph, and from the scale of the map it is manifest that the distance is at least three miles from the main stockyards area to the heart of the city.

Govt. brief—p. 33:

> * * * (many, if not most, of whom do not personally accompany their livestock to market, and very few of whom use the Transit House) * * *.

Comment: The parenthetical clause is supported by the record at pages 272, 375, and 408, from which it appears that the [illegible]nal users of the Transit House are now commercial truckers rather than the owners or shippers of livestock, and from which the inference is inescapable that those who ship by rail seldom accompany their livestock to market.

Govt. brief—p. 51:

> Spratt obtained his value of the Belt land by comparing it with appellant's adjoining land, but in doing so he capitalized at 6% the income derived by appellant at its then prevailing rates.

Comment: The above statement is supported by consideration of the testimony of Spratt at pages 244, 255, 257, and 258 of the record.

Govt. brief—pp. 51–52:

> So up to this point it is obvious that the whole value of the stockyards land and of the right-of-way had been calculated by Spratt upon a capitalization of the stockyard com-

> pany's earnings under the then existing rates—obviously a fallacious method when rates themselves are fixed by regulatory authority.

Comment: The above sentence is a conclusion from the full page of discussion which immediately precedes it in the brief and in which discussion numerous record references are cited.

Govt. brief—p. 52:

> But when Spratt, in 1932, came to make a reappraisal of Zone A he relied upon the consideration stated in the mere paper transaction between appellant and its subsidiary, rather than upon the later sale to outside parties.

Comment: The above sentence is amply supported by the cross-examination of Mr. Spratt, at pages 786–793 of the record.

Govt. brief—p. 52:

> In this proceeding Spratt and others testified that the total value of the Belt property for rate-making purposes in the year 1928 was $2,500,342 (Gov. Ex. 135, p. 158). In reaching this valuation he had included the land at 30¢ per square foot (Gov. Ex. 135, p. 25).

Comment: The quoted sentence does not say that Spratt alone testified to a value of $2,500,342, but it says that "Spratt and others" so testified. Government Exhibit 135, page 158, contains the identical figure quoted above as being the amount

which in 1928 appellant claimed before the Interstate Commerce Commission to be the value of the Belt property for rate-making purposes. Government Exhibit 135 as a whole shows that this value for rate-making purposes was the result of Spratt's land appraisal plus other appraisals of structures, etc. This furnishes ample support for the quoted sentence.

Govt. brief—p. 53:

> There is nothing in the record to indicate, and it is not to be presumed, that this discrepancy between the appraised value and the sale value applied in any greater or less degree to the land than to the other elements of the property.

Comment. Of course this is a negative statement, and appellant does not call attention to anything in the record which contradicts it.

Govt. brief—p. 58:

> * * * at a time when labor and materials were much cheaper than now, it is obvious that an extremely liberal policy in respect to the determination of fair value was pursued towards appellant.

Comment: Just preceding the portion of the sentence quoted, the Government had made the statement that many of the structures were built more than thirty years ago, citing page 626 of the record which fully supports the statement made. The quoted clause to the effect that labor and materials were much cheaper thirty years ago is a matter, it

is submitted, of which this Court may take judicial notice.

Govt. brief—p. 61:

> That Henrici used the personal inspection method prior to the first hearing in 1929 is clearly established by the evidence (R. 214).

Comment: On page 214 of the record Mr. Henrici testified as to the method he employed in reaching percent condition as expressed in Government Exhibit 4–I or "in the revised Government figures," and from his explanation of his method it is clear that he used the personal inspection method. Mr. Henrici at the first hearing was not cross-examined as to whether he made a personal inspection, as everybody concerned at the hearing knew that he had made such an inspection, and the question was not raised. It should be noted that appellant does not now contend that Mr. Henrici did not make a personal inspection prior to the first hearing, and has not contended in this litigation that Mr. Henrici did not personally inspect the premises prior to the first hearing.

Govt. brief—p. 63:

> Although the Government offered these men as witnesses * * *.

Comment: This matter is fully covered by the stipulation at pages 944–945 of the record.

Govt. brief—p. 66:

> Inasmuch as Henrici had carefully inspected appellant's property prior to the

> first hearing and had given his independent judgment upon its condition * * *.

Comment: This has already been covered by the comment on the sentence quoted from page 61 of the Government brief, *supra,* and by reference to page 214 of the record.

Govt. brief—p. 68:

> * * * the Secretary adopted valuations of the structural properties as a whole which were based upon the fact of their successful operation * * *.

Comment: Appellant has merely extracted a portion of a sentence, and if the remainder of the sentence had been quoted, it would have been seen that a record reference was cited. The reference cited was to page 112 of the record where the Secretary expressly states that his valuation includes a large amount for going concern value, which is inextricably interwoven with other values. At the beginning of the paragraph from which the quoted sentence is taken the Government cited pages 107–112 of the record as fully describing the Secretary's treatment of going concern value, and from which it is clear that the Secretary did value appellant's property as a successfully operating concern.

Govt. brief—p. 88:

> Indeed, the valuation adopted is the value of a plant in successful operation * * *.

Comment: The sentence quoted is introductory to a discussion of the evidence which the Govern-

ment believes fully establishes that the valuation adopted is the value of a plant in successful operation. This evidence is fully discussed at pages 89 to 94 of the Government's brief.

Govt. brief—p. 91:

> It is clear that Henrici regarded his valuation as embodying the element of going concern value.

Comment: The above sentence follows immediately a quotation at page 90 of the Government's brief from Mr. Henrici's testimony, such quotation taking up nearly a full page in the brief. The quotation from Mr. Henrici's testimony is found at page 439 of the record, as the Government's brief at page 90 shows.

Govt. brief—p. 91:

> Thus in ascertaining value the Secretary has adopted a method which allows a substantial increment over and above actual cost.

Comment: This sentence is in the nature of a summary of the manner in which the Secretary has made allowance for the element of going concern value, and it relates to the discussion of the evidence which both precedes and follows the sentence quoted. If this sentence is read in the context of the several page discussion of going concern value in which it occurs, there can be no doubt that it is a fair statement of what the record shows the Secretary did.

Govt. brief—p. 96:

> For example, the roof of the hog yards was replaced at a cost of $4,445.93, and the roof of the sheep shed was replaced at a cost of $3,232.43 (Gov. Ex. 121–A, pp. 254, 4).

Comment: Page 4 of Government Exhibit 121–A shows the charges made on account of repairs for the different types of structures during the years covered by the record. Among these items is one for the year 1928 in the amount of $31,258.17 for yard structures and fences. The analysis of this item on page 254 of the same Exhibit shows that it includes a charge of $4,445.93 for a hog yard roof and $3,232.43 for a sheep shed roof.

Govt. brief—p. 96:

> A study of the company's annual expenditures for repairs and maintenance discloses that they include many replacements.

Comment: This statement is supported by the record at pages 446–447, particularly where the witness said: "All other items that came to my mind are susceptible to the definition of replacements rather than repairs."

Govt. brief—p. 97:

> The Secretary's estimate of the amount annually needed for repairs and replacements was based first of all upon a study of the actual amounts expended over a long period of years by appellant and charged to the repair account. The figures are as follows:

Year	Total	Year	Total
1918	$40,484.37	1927	$39,000.48
1919	72,131.89	1928	45,679.60
1920	52,829.69	1929	43,516.51
1921	29,172.07	1930	29,500.12
1922	38,560.57	1931	24,965.34
1923	48,350.88	1932	19,793.79
1924	47,072.47		
1925	42,391.99	Total	629,066.81
1926	55,686.04	Yearly average	41,937.78

Comment: The figures in the above table for the years 1922 to 1931, inclusive, are shown in Government Exhibit 121–A, pages 338–342, which is cited at page 97 of the Government's brief. The figure for 1932 is obtained by adding the figure shown for the first eight months of 1932 at page 339 of Government Exhibit 121–A and the figures shown for September 1932 in Government Exhibit 121–B, page 4, and the figures shown for October, November, and December of that year in Government Exhibit 121–C, pages 5 and 6. As for the years 1918–1921, it is regretted that due to an oversight these figures were cited, whereas they are actually to be found only in Government Exhibit 12, page 14, which Exhibit was introduced in the first hearing before the Secretary, but was not certified as part of the record to this Court. However, if the four years, 1918–1921, are excluded from the table, the yearly average expended for repairs and replacements charged to the repair account would be less than the yearly average shown on the above table. If the four years 1918–1921 are excluded from the above table, the yearly average expended

for repairs and replacements charged to the repair account would be $39,496.16 instead of $41,937.78 as shown by the above table. The effect, therefore, of the inadvertent inclusion in the above table of the experience of four years not shown in the record certified to this Court (although shown in the Exhibit introduced before the Secretary at the first hearing) is to show a higher yearly average expenditure for repairs and replacements charged to the repair account than would be shown if those four years were excluded, and appellant therefore has not been prejudiced by this inadvertence.

Govt. brief—p. 97:

> There are also included in these repairs certain items of expense for replacements, such as replacement of the roof on the hog yards and the sheep shed previously discussed.

Comment: This has already been covered in the comment on the first sentence challenged by appellant on page 96 of the Government's brief.

Govt. brief—p. 98:

> * * * although deductions for retirements shown on the books do not in all cases represent actual loss because they represent gross and not net retirements. Some of the properties retired were sold or traded for new and similar assets, so that the net retirements would not be as great as is indicated.

Comment: At page 103 of the Government's brief it is stated that the gross value of the retire-

ments for all property for the years 1916 to 1932 was $239,550.80, and page 453 of the record is cited in support. At page 104 of the Government's brief it is shown that there was charged to depreciation reserve for net retirements only $116,405.86, and this is also shown by the table at page 98 of the Government's brief. At page 104 of the Government's brief it is also stated that there was charged to surplus for retirements $54,896.85, and record references are cited in support. The net retirements of $116,405.86 charged to the depreciation reserve plus the amount of $54,896.85 charged to surplus for retirements amounts to a total of $171,302.71. If this amount is subtracted from the gross retirements of $239,550.80 the result is $68,248.09, which represents the value realized from the sale of property retired. The sentence quoted above from page 98 of the Government's brief is also further supported by the testimony at page 453 of the record.

Govt. brief—p. 103:

> The property in the pen areas is kept in proper operating condition by ordinary repairs and piecemeal replacements. The reproduction new cost of this part of the property is about one-half of the reproduction cost of the entire property—or approximately $1,500,000.

Comment: After the sentence on page 103 of the Government's brief which immediately follows the

sentence quoted above, page 458 of the record is cited. The testimony at page 458 fully supports the sentence quoted, as the witness there testified that pens and fences come under the classification of assets which are maintained indefinitely by repairs, at least by repairs as classified on the books of this company; also, that the value of the pens and fences amounts to about a million and a half dollars.

Govt. brief—p. 103:

> This amount includes retirements for fire losses which were covered by insurance (R. 453).

Comment: The reference to page 453 of the record may be supplemented by reference to Government Exhibit 121A, pages 357–358, which shows the insurance carried on the various properties of appellant, indicating the general policy of appellant to carry insurance on all its property. Government Exhibit 124, page 18, which is an analysis of the surplus for the years 1916–1932, shows an item of gain from fire settlements, etc.

Govt. brief—p. 106:

> Line in table shows dividend of $187,500 for 1932.
>
> Government ex. 121–A, p. 10, shows dividend 1932, $112,000, or $3.00 per share.

Comment: Government Exhibit 121–A, page 10, should be supplemented for the year 1932 by Government Exhibit 121–C, page 3, which shows the

dividends for the full year 1932 to be $187,500. The amount $112,000 shown by Government Exhibit 121–A, page 10, is only for the first six months of the year, whereas, Government Exhibit 121–C shows the dividends for the full year to be $187,500.

Govt. brief—pp. 114–115:

> The record in the instant case clearly demonstrates that appellant's property has reached a normal operating condition—a condition in which the expense required for repairs and replacements has for some years been, and may in the future be expected to be, fairly static.

Comment: The sentence quoted immediately precedes a two-page discussion of the evidence which includes extracts quoted from the record that clearly show that appellant's property has reached a normal operating condition, with a reasonable expectation that the requirements for repairs and replacements will for some years be fairly static.

Govt. brief—p. 115:

> The stockyard was built sometime during the 1890's and has been rendering continuous service since that time (R. 626).

Comment: Reference to page 626 of the record shows that a substantial amount of the construction had been completed and that the stockyards was being operated in the 1890's. On page 116 of the Government's brief testimony is quoted indicating that the stockyard has been operating since

1898, and citation for this is given to R. 357. Appellant does not contend that the stockyards has not been rendering continuous service since that time.

Govt. brief—p. 116:

> A consulting engineer who testified for appellant at the second hearing said that appellant's property had "about reached the turnover stage" and that this applied to the "stockyards" buildings, and improvements, which include the pen areas" (R. 723).

Comment: It is submitted that the reference to page 723 of the record fully supports the statement made. Moreover, immediately following the quoted sentence the Government has quoted verbatim the testimony of the witness from page 723 of the record. (See Government's brief, pp. 116–117.)

Govt. brief—p. 121:

> * * * it appears from appellant's books that this charge was not always imposed (R. 569).

Comment: The testimony at pages 569–570 of the record should be supplemented by the testimony of appellant's President and General Manager, at page 826 of the record. (This testimony at page 826 of the record is cited in the part of the sentence which appellant omitted.) The President and General Manager testified that appellant did not collect yardage on resales of livestock in the Commission Division to go to the country. He further said that

the destination to the country for feeding "relieves the sale of this re-yardage, no matter how it is sold to the country."

Govt. brief—pp. 121–122:

> * * * was unreasonable and constituted unjust discrimination (R. 128).

Comment: Appellant contends that this statement is not supported by the reference given, which appellant contends relates only to feedlot yardage. The Government contends, however, that the secretary at page 128 of the record found that the whole schedule, including the resale and reweigh charge, was unreasonable and unjustly discriminatory. See also the paragraph in the middle of page 130 of the record.

Govt. brief—p. 137:

> Lack of sufficient return from the operation of the feedlots was reflected in a reduced net income for appellant, with the resulting need for higher rates for other services.

Comment: This statement is fully justified when read in the context of the discussion from which it is taken.

Govt. brief—p. 137:

> * * * an analysis was made to determine the value upon which the feedlots should yield a fair return.

Comment: It is true that the Secretary has not set up in the order the mathematical calculations

which appear at pages 137–139 of the Government's brief, but these calculations are all made from matters in the record and record references in the brief amply support the figures forming the basis of the calculation.

Govt. brief—p. 137:

> Relating the square foot area of the feedlots in each zone to the square foot land value thereof, it is found that the value of the land occupied by the feedlots is $211,660.

Comment: Reference to page 137 of the Government's brief shows that there is a footnote explanatory of the figure in the above sentence, and the footnote shows from which Government Exhibits the figures used therein were derived.

Govt. brief—p. 138:

> * * * making the total cost of reproduction new less depreciation of structures, plus the value of the land used for these facilities, $369,192.

Comment: The figure $369,192 is the result of a calculation which is spelled out in detail in the paragraph immediately preceding.

Govt. brief—p. 138:

> The taxes and insurance properly allocable to the feedlot lands and structures were about $6,336 (Gov. Exs. 121A, 121B, 121C).

Comment: The calculation showing the allocation of taxes and insurance to the feedlot lands

and structures to be about $6,336 was made from the detailed analyses of insurance and of state, county, and city taxes found at pages 348–375 of Government Exhibit 121–A, pages 11 and 12 of Government Exhibit 121–B, and pages 13 and 30 of Government Exhibit 121–C.

Govt. brief—p. 138:

> Many of these structures are substantial in character and a large portion of the land is located within the limits of the city of St. Joseph and must, therefore, carry a higher tax rate than lands located outside the limits. The details upon which the segregation of such taxes and insurance were made will be found on pages 348–375 of Government Exhibit 121A.

Comment: The references relative to the basis for computing insurance and taxes allocable to feedlots are given in the last preceding comment. That many of the feedlot structures are substantial in character would seem to be self-evident, but in any event it is supported by the footnote on page 138 of the Government's brief showing the value of such structures. As for the statement that some of the land lies within the city limits of St. Joseph, that fact is shown by Government Exhibit 128, pages 38–40 inclusive, in which it appears that zones one, two, and three lie within the city limits (that is, in South St. Joseph Town Company's 2nd and 3rd Editions) and the Secretary's description of

the feedlots shows that a considerable portion of the land so used is in zones one, two, and three (R. 66–69).

Govt. brief—p. 160:

> As a matter of fact, during the five-year period, appellant actually expended for repairs only $156,096, or $36,404 less than the amount allowed for that purpose by the Secretary.

Comment: The item of $156,096 is the total of the expenditures for repairs during the five-year period 1927–1931, inclusive (R. 120A), from which have been eliminated expenditures for repairs attributable to property found by the Secretary not to be used and useful, and the replacement of the hog house roof, the sheep shed roof, and certain replacements on the quarantine scale house, which were regarded as replacements rather than repairs. The difference between this figure and those in the table at page 97 of the Government's brief is due to the fact that the table covers all repairs made by appellant on all property owned by it, whereas the calculation at page 160 of the Government's brief relates only to repairs on used and useful property.

Govt. brief—p. 161:

> Appellant annually received in normal course recurring refunds on casualty insurance, which for the five-year period amounted to $31,816 (Gov. Ex. 121A, p. 7, line 8), and which appellant has not included

in its calculation either as income or as a decrease in expense.

Comment: Reference to Government Exhibit 121–A, page 7, line 8, shows the additions to surplus on account of dividends from casualty insurance for each year 1927 to 1931 inclusive. The sum of the figures shown for these five years is $31,816.

Govt. brief—p. 161:

> Based on appellant's experience for the years 1931–1932 there would have been an increase in appellant's revenue for the five-year period of $108,428 if appellant had applied the maximum rates for resales and reweighs permitted by the Secretary's order to all the business permitted by that order (Gov. Exs. 121A, p. 60; 121B, p. 7; 121C, p. 14; 122; 122A).

Comment: The Government Exhibits cited show the volume of resales and reweighs in 1931 and 1932 to which the Secretary's rates would have been applicable. The volume of livestock to which the resale and reweigh charge would have been applicable was fully discussed at pages 120–132 of the Government's brief. Assuming that the experience of 1931 and 1932 was typical of the five-year period, if the Secretary's rates had been fully applied to the business of such period there would have been an increase in appellant's revenue during the full period of $108,428.

Govt. brief—p. 176:

> The Secretary properly recognized that in addition to the cost of rendering services, the value of the services should be considered.

Comment: This is a reasonable inference from the findings and order of the Secretary as a whole.

Respectfully submitted,

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FEBRUARY 1936.

U. S. GOVERNMENT PRINTING OFFICE: 1936